

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 DOUGLAS HARRY WARENBACk,

Case No. 2:15-cv-01789-APG-VCF

5 Petitioner,

ORDER

6 v.

7 D.W. NEVEN, et al.,

8 Respondents.

9 This *pro se* habeas matter under 28 U.S.C. § 2254 comes before the court on
10 petitioner Douglas Harry Warenback's motion for leave to file an amended petition. ECF
11 No. 69. Respondents opposed and Warenback replied. ECF Nos. 72, 75. I deny
12 Warenback's motion.

13 On February 12, 2018, this court granted respondents' motion and dismissed
14 ground 1 as procedurally barred, ground 2 as noncognizable in federal habeas corpus,
15 and ground 4 as untimely. ECF No. 68. On February 23, 2018, Warenback filed a
16 motion for leave to file an amended petition. ECF No. 69. Warenback states that
17 respondents' exhibits filed June 27, 2016 contained the motion to withdraw due to
18 conflict that his counsel filed on December 3, 2012. The 2012 state-court motion
19 indicated that the public defender could not represent Warenback because his office
20 was representing the victim in Warenback's case in a juvenile criminal case.
21 Warenback acknowledges in his motion to amend that that he was notified at the time
22 the motion was filed that there was a conflict of interest because the public defender
23 represented the victim in another case. However, he states that he never saw the
24 motion itself and that no one mentioned that there was a juvenile criminal case against
25 the victim. He apparently argues that he may not have entered into the guilty plea if he
26 had known about the juvenile case against the victim.

27 First, Warenback's claim of ignorance of the nature of the conflict appears to be
28 belied by the record. The deputy public defender stated in his declaration in support of

1 the 2012 motion that the public defender was engaged in an ongoing representation of
2 the victim in another case. ECF No. 22-3. Warenback acknowledges that he was
3 notified of the motion at the time it was filed. Moreover, even assuming, arguendo, that
4 Warenback was unaware of the victim's criminal case in 2012, he acknowledges that he
5 became aware of it when respondents filed a copy of the motion as an exhibit to their
6 first motion to dismiss. Those exhibits were filed in June, 2016, and Warenback offers
7 no explanation whatsoever as to why he waited almost two years to try to add a claim
8 based on the existence of the juvenile criminal case. He fails to demonstrate that the
9 factual basis for this claim could not have been discovered earlier through due
10 diligence. 28 U.S.C. § 2244(d)(1)(D).

11 IT IS THEREFORE ORDERED that petitioner's motion for leave to file an
12 amended petition **(ECF No. 69) is DENIED.**

13 IT IS FURTHER ORDERED that petitioner's motion for certificate of appealability
14 **(ECF No. 71) is DENIED.**

15 IT IS FURTHER ORDERED that respondents' motion to extend time to respond
16 to the motion for leave to amend **(ECF No. 70) is GRANTED *nunc pro tunc*.**

17 IT IS FURTHER ORDERED that respondents' motion for extension of time to file
18 their answer to the petition **(ECF No. 73) is GRANTED.** Respondents shall file their
19 answer within **forty-five (45) days** of the date of this order.

20 DATED: 4 May 2018.

21
22 
23 ANDREW P. GORDON
24 UNITED STATES DISTRICT JUDGE
25
26
27
28